

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TRINITY IRENE MILLER,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRANDON JONES,

Respondent-Appellant,

and

JESSICA MILLER,

Respondent.

UNPUBLISHED

March 22, 2005

No. 257090

Oakland Circuit Court

Family Division

LC No. 02-668597

Before: Owens, P.J., and Sawyer and White, JJ.

PER CURIAM.

Respondent-appellant (respondent)¹ appeals by right from the circuit court order continuing temporary wardship and continuing the minor child's placement in foster care. Respondent specifically challenges the court's authorization of the petition and finding of jurisdiction under MCL 712A.2(b)(1). We reverse the court's finding of jurisdiction based on respondent's alleged neglect, but affirm the court's continuing full jurisdiction over the child.

On July 19, 2002, two days after the child was born, petitioner sought temporary custody of the minor child, listing the parents as Jessica Miller and an unknown father. Miller could not provide proper care and custody because she was then in the Adrian Training School, a locked facility for delinquent minors, which did not allow babies. The trial court authorized the petition the same day and held a preliminary hearing on July 24, 2002. After the hearing, the court continued placement in foster care, with supervised parenting time.

¹ Respondent-mother Jessica Miller has not appealed the court's rulings and will be referred to as Miller for the purposes of this opinion.

At an initial hearing and pretrial conference on August 8, 2002, Miller pleaded no contest to the allegations in the petition. Miller's attorney told the court Miller knew who the father was, had no contact with him, and would like contact with him to see if he could be part of a plan for the child. Miller then informed the court and petitioner that respondent was the father. The trial court continued placement in foster care, continued supervised parenting time, and said an effort would be made to notify respondent of his rights as a putative father. The referee included the putative father's name and telephone number in his report and noted that parenting time was inappropriate until the putative father established paternity.

On January 7, 2003, the court released Miller from the training school, closed her delinquency file, and adjourned the baby's case for three months after placing Miller in the child's foster home. At the April 8, 2003 review hearing, Miller explained that the living situation did not work out, but she was in an independent living program, had a job, and was looking at colleges. Although unsupervised parenting time was authorized, the court clarified that Miller was to have no contact with the putative father when she was with the child.

On July 8, 2003, Miller signed a release of her parental rights, conditioned on termination of the father's parental rights.² The court explained that it would not accept the release until it resolved the father's rights. A copy of the July 14, 2003 order of disposition was mailed to respondent; according to the trial court record, that was the first order mailed to respondent. The day after that order was signed, petitioner filed a petition seeking termination of the parental rights of "John Doe." On September 25, 2003, respondent was personally served.

At the October 16, 2003 hearing, respondent appeared for the first time. Miller and respondent signed an acknowledgment of parentage. The referee found that respondent was the legal father and adjourned for three weeks for petitioner to file the acknowledgment and determine how to proceed; meanwhile, the child remained in foster care. On November 3, 2003, the day of the next hearing, petitioner filed a "second amended petition," seeking termination of respondent's parental rights alleging he knew he had a child, and he failed to provide proper care and custody. Respondent pleaded "not guilty" to the allegations and requested a preliminary hearing.

At the preliminary hearing on November 18, 2003, petitioner filed a "first amended petition," requesting the court take jurisdiction regarding respondent, terminate Miller's parental rights, and keep the child in foster care. The petition alleged that Miller said she informed respondent he was the biological father more than once and he did not come forward until late October 2003, respondent was involved in automobile theft and used marijuana, and respondent had not provided a substantive physical or financial plan for his child. At the November 18, 2003 preliminary hearing, petitioner moved to dismiss the November 3, 2003 petition and asked the court to address only the November 18, 2003 petition. Respondent's attorney said respondent waived testimony to establish probable cause that the allegations were true because

² We note that a release of parental rights under the Adoption Code may not be conditional. MCL 710.29(7) provides that "[u]pon the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child."

the court had no basis for jurisdiction even if all the allegations were true. He further argued that there was no neglect because respondent appeared and wanted his child and had no legal responsibility before legally establishing paternity.

The court disagreed with respondent's argument, stating that behavior before a person perfects paternity can be used in a later neglect action. The court authorized the petition after finding that the child came within the neglect statute, specifically because respondent did not come forward until October 2003 and did not have a physical and financial plan in writing at that time. The court suggested that the child might soon be placed with respondent if he made a good faith effort to work with the Family Independence Agency. However, the court explained that, once a child was in the court's jurisdiction, it was insufficient for the father to merely say he wanted the child; the court had the power to determine appropriate placement, and respondent had to show a housing plan and financial plan. The court said respondent had not yet done enough. Respondent requested that he at least be granted parenting time. The court found that it was contrary to the child's welfare to be placed in respondent's custody, ordered petitioner to prepare an initial service plan for respondent, and granted respondent parenting time of at least two hours each week.

Respondent petitioned for review of the referee's recommendation. The court heard the review on December 18, 2003. Petitioner's attorney argued that, although it might not be a "legal responsibility," respondent still had a responsibility to the child he fathered. The attorney claimed respondent was contacted by Miller and the Family Independence Agency several times and refused to acknowledge paternity until Miller relinquished her rights and, therefore, full custody was not appropriate at that time. The court held that the referee did not abuse his discretion, and the November 18, 2003 petition was properly authorized. Respondent's attorney inquired whether the court held that respondent had a legal responsibility before he acknowledged paternity, and the court said that the referee did not abuse his discretion in that respect. Petitioner's attorney then successfully moved to amend the petition to add a section K, which alleged that respondent did not have appropriate housing and transportation and that he acknowledged paternity.

The court held an initial hearing and pretrial conference on January 13, 2004. The court explained that petitioner sought termination of parental rights regarding Miller and temporary custody regarding respondent; both stood mute and requested a bench trial. The bench trial for temporary wardship regarding respondent and termination of Miller's parental rights was held on March 24, 2004. Respondent twice requested that the petition be dismissed. Petitioner's attorney argued that respondent's repeated failure to come forward after Miller told him about the child was relevant to his ability to parent the child because a father cannot just choose when he wants to be a parent. The attorney argued also that respondent failed to provide a financial or physical plan after coming forward.

The court denied respondent's request for dismissal and declined to explain further when respondent's attorney asked for the basis of the court's decision. Miller's attorney also moved for dismissal of the termination petition against her. The court granted her request and continued the child as a temporary court ward. Regarding respondent, the court found that he had actual knowledge his child was in foster care, and he had an obligation to come forward regardless whether he received any notice from the court. The court found the material allegations in the petition were true and took jurisdiction over the child under MCL 712A.2(b). When

respondent's attorney inquired whether the court found respondent had a legal duty, the court said respondent had an obligation to come forward, which the court believed stemmed from an unspecified court rule.

The court referred respondent and Miller to the court clinic for psychological evaluations to determine what services were needed. The child's lawyer-guardian ad litem also requested that respondent undergo random drug screens. Respondent's attorney told the court his client would agree, and the court ordered the screens. The next day, respondent sought review of the referee's recommendation; on April 26, 2004, the recommendation was affirmed. When respondent failed to comply with the court order, the court suspended respondent's parenting time pending a psychological evaluation and clean screens. After a June 28, 2004 disposition hearing, the court ordered continued placement in foster care, adopted the parent-agency agreement, and ordered supervised parenting time after the agency had proof of three negative drug screens. The court scheduled the next hearing for August 23, 2004. Respondent appeals the July 14, 2004 order of disposition, specifically challenging the trial court's decisions to authorize the petition and take jurisdiction of the child regarding respondent.

Respondent argues that the court erred in finding that it had jurisdiction because he did not have a legal responsibility to the child before he became her legal father under the acknowledgment of paternity act, MCL 722.1001 *et seq.* He asserts that he could not be neglectful under MCL 712A.2(b)(1) because he was not her parent, as defined by MCR 3.903(A)(7) and (17), when he failed to come forward and provide for her. We agree.

The family division of the circuit court may authorize a petition if it finds probable cause to believe at least one allegation is true and the allegation brings the child within the statute granting jurisdiction, MCL 712A.2(b). MCR 3.962(B)(3); MCR 3.965(B)(11). MCL 712A.2(b)(1) states in relevant part:

Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

"Parent" is defined by MCR 3.903(A)(17) as "the mother [or] the father as defined in MCR 3.903(A)(7)." Under MCR 3.903(A)(7) defines "father" in relevant part as:

(c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;

(d) A man judicially determined to have parental rights; or

(e) A man whose paternity is established by the completion and filing of an acknowledgment of paternity in accordance with the provisions of the

Acknowledgment of Parentage Act, MCL 722.1001, *et seq.*, or a previously applicable procedure. For acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public.

Until October 16, 2003, the date respondent-appellant signed the acknowledgment of parentage, he was not a father as defined by the court rule. No order of filiation or judgment of paternity had judicially determined respondent-appellant to be the father, and no judicial determination had accorded him parental rights. Therefore, respondent-appellant was not a father and, thus, not a parent for the purpose of MCL 712A.2(b). Moreover, there was no judicial determination that respondent-appellant was legally responsible for the child. Hence, the court erred when it found that it had jurisdiction of the child because of respondent's alleged neglect pursuant to MCL 712A.2(b)(1).

Nevertheless, continuing jurisdiction over the minor child was proper. To take jurisdiction, the court must find by a preponderance of the evidence that the child comes within its statutory authority under MCL 712A.2(b). *In re CR*, 250 Mich App 185, 201-202; 646 NW2d 506 (2002). Although respondent-appellant was not considered a parent, Miller clearly was. Miller pleaded no contest on August 8, 2002, to the allegations in the petition. This plea gave the court full jurisdiction over the child. Because Miller was unable to care for the child while in the training school, the minor child was without proper custody or guardianship within the meaning of MCL 712A.2(b)(1). See *In re Middleton*, 198 Mich App 197, 199-200; 497 NW2d 214 (1993) (when developmentally disabled mother completely lacked the ability to care for herself, the child presumptively faced substantial risk and was without custody or guardianship). Moreover, Miller's inability to care for the child constituted nonculpable neglect sufficient for the court to exercise jurisdiction under MCL 712A.2(b)(2). *In re Jacobs*, 433 Mich 24, 32-34, 39-41; 444 NW2d 789 (1989).

Once jurisdiction over the child is obtained, the court may determine what measures should be taken against *any adult* with respect to the child. *In re CR*, *supra* at 202, citing MCR 5.973(A)(5)(b) (now MCR 3.973(A)). See also *In re Macomber*, 436 Mich 386, 390, 399-400; 461 NW2d 671 (1990), in which our Supreme Court noted that MCL 712A.6 gave courts ancillary jurisdiction over adults and the power to make orders necessary for the well-being of a child. This includes adults who are not respondents. *In re CR*, *supra* at 203. Thus, the court already had jurisdiction to enter orders concerning respondent, and we will not reverse the court's decision to enter the challenged orders of disposition when the right result was reached for the wrong reason. *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995).

Given our resolution of this issue, all respondent's remaining issues are moot. While we reverse the court's finding of jurisdiction based on respondent's alleged neglect, we affirm the court's continuing full jurisdiction over the child with the attendant authority to enter whatever orders concerning respondent that the court finds are necessary for the physical, mental, or moral well-being of the child.

Affirmed.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Helene N. White